IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

(1) S.B. CIVIL WRIT PETITION NO. 649/2002
MS/ AMIT CONSTRUCTION Vs. THE STATE OF RAJASTHAN & ORS.
&
(2) S.B. CIVIL WRIT PETITION NO. 651/2002
MS/ AMIT CONSTRUCTION Vs. THE STATE OF RAJASTHAN & ORS.

DATE: 25.09.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. L.D. Agarwal for the petitioners.
Mr. B.S. Chhaba, Dy. GA for the State.

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In both these writ petitions, common questions of facts and law are involved, therefore, are being decided by this common order.

In S.B.C.W. Petition No. 649/2002, on behalf of the Government of Rajasthan, respondent No.4 invited tenders for the work of excavation and lining of Right Main Canal of Bisalpur Project from R.D. 23500 metre to 24000 metre in the month of September, 1998, whereas in S.B.C.W. Petition No. 651/2002, respondent No.4 invited tenders for the work of excavation and lining of Right Main Canal of Bisalpur Project from R.D. 24000 metre to 24500 metre in the month of September, 1998.

Pursuant to the tenders invited by the respondent No.4 for both the works of excavation, the

petitioner submitted his tenders for the said work and the same were accepted and conveyed vide letter dated 18.11.98 and the work order was issued by the respondent No.4 vide letter dated 19.11.98 and Agreement Nos. 4/98-99 and 5/98-99 were executed between the parties.

It is not disputed that the petitioner started work, but has not completed the same within the stipulated period as per the terms and conditions of the agreement, therefore, the respondents issued a letter to start the work.

These writ petitions are directed against the letter dated 05.01.2002 (Annexure-6). Vide this letter, the petitioner was given reference to the discussions held between the parties on 05.01.2002 regarding completion of the balance work under aforesaid agreement and the petitioner was requested to start the work immediately, the variation and rates demanded by the petitioner under his earlier letters can be considered only on fulfillment of both conditions of the Clause 12-A and until and unless both conditions of 12-A are fulfilled, the revision of rate under Clause 12-A cannot be agreed by the Government and, therefore, vide this letter dated 05.01.2002, the petitioner was requested to start the work immediately.

This letter/order dated 05.01.2002 is under challenge on the ground that the respondents have not rightly interpreted clause 12-A of the agreement, which reads as under:-

> **"12-A. Quantum of additional/extra work/ excess work etc.-** The quantum of additional work for each item shall not exceed 50% of the original quantity given in the agreement and the total quantum of additional and or extra items shall not exceed 20% of the total contract value unless otherwise mutually agreed by the Engineer-in-charge and the contractor."

Meaning thereby, the petitioner has to execute the work and the additional work which is alleged to be performed by the petitioner exceeding the total contract value, either it should be mutually agreed by the Engineer-in-charge or the contractor, then only this can be granted in favour of the petitioner. To this extent, the respondents have indicated their intention in the letter dated 05.01.2002, which is under challenge in these writ petitions.

The respondents have categorically stated that this writ petition is not maintainable as the petitioner has got alternative efficacious remedy to invoke clause 23 to arbiter his dispute. Clause 23 of the agreement reads as under:-

"Clause 23.- If any question, difference or objection whatsoever shall, arise in any way in connection with or arising out of this instrument of the meaning of operation of any part thereof or the rights, duties or liabilities of either party, then save in so far as the decision of any such mater as herein before provided for and been so decided, every such matter constituting a total claim of Rs. 50,000/- or above, whether its decision has been otherwise provided for and whether the contract should be terminated or has been rightly terminated and as regards the rights or obligations of the parties as the result as such termination shall be referred for decision to the empowered standing committee which would consist of the following:-

1) Administrative Secretary concerned;

2) Finance Secretary or his nominee not below the rank of Deputy Secretary

3) Law Secretary or his nominee not below the rank of Joint L.R.;

4) Chief Engineer cum Addl. Secretary of the concerned Department.

5) Chief Engineer concerned (Member-Secretary).

The Engineer-in-charge on receipt of application along with prescribed fee (the fee would be two percent of the amount in dispute not exceeding Rs. One lakh) from the contractor shall refer the disputes to the committee within a period of one month from the date of receipt of application."

The arbitration clause has not been invoked by the petitioner on the ground that Standing Committee which consists Administrative Secretary concerned, Finance Secretary or his nominee not below the rank of Deputy Secretary, Law Secretary or his nominee not below the rank of Joint L.R., Chief Engineer cum Addl. Secretary of the concerned Department and the Chief Engineer concerned (Member-Secretary) and majority of the members has taken decision in the matter of the petitioner, therefore, invoking jurisdiction of clause 23 for arbitration is nothing but a futile exercise and, therefore, this writ petition has been preferred by the petitioner.

In support of his submissions, the learned counsel for the petitioner has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of **Noble Resources Ltd. Vs. State of Orissa & Anr. AIR 2007 SC 119,** wherein the Hon'ble Supreme Court has held that even in contractual matters, jurisdiction under Article 226 can be invoked and the Court cannot refuse to hear the contractual matter only because there exists a disputed question of fact or an alternative remedy is available.

It is also submitted by the respondents that the contract agreement already cancelled, which has not

been disputed by the learned counsel for the petitioner. As per the letter dated 05.01.2002 (Annexure-6), the petitioner has not started his work and, therefore, during pendency of the writ petition, the contract agreement has been cancelled, which has not been challenged by the petitioner in this writ petition.

Having considered the rival submissions of the respective parties and after going through the impugned letter dated 05.01.2002 (Annexure-6) and clause 12(A), as the petitioner has not availed the opportunity offered through letter dated 05.01.2002 that on fulfillment of the requirement of Clause 12-A, the revision of rate can only be admissible and agreed and on failure of work, the contract itself is cancelled. Even otherwise also, the petitioner could have invoke Clause 23 to arbiter his dispute by way of arbitration by invoking arbitration clause 23, as mentioned in the agreement, which has been executed by both the parties.

Having considered the ratio decided by the Hon'ble Supreme Court in the aforementioned case of **Noble Resources Ltd. Vs. State of Orissa & Anr. (supra)** and as per the settled proposition of law as held by the Hon'ble Supreme Court and this Court, interference in contractual matters can only be made in rarest of

rare cases and the present case is not rarest of rare case, therefore, exercising extraordinary jurisdiction under Article 226 of the Constitution of India is not required in the present matter and I find no merit in the writ petition as the contract agreement itself is cancelled and the same has not been challenged by the petitioner.

In view of the aforesaid observations, both the writ petitions fail being devoid of merit and the same are accordingly dismissed.

The interim orders dated 24.01.2002 and 14.03.2002 granted by this Court in S.B. Civil Writ Petition Nos. 649/2002 and 651/2002 stand rejected. The stay application Nos. 478/2002 and 480/2002 also stand dismissed.

(K.S. RATHORE),J.

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